

GOVERNMENT OF ASSAM
OFFICE OF THE PRINCIPAL COMMISSIONER OF STATE TAX
CUM COMMISSIONER OF TAXES, ASSAM
KAR BHAWAN :: DISPUR, GUWAHATI-6

CIRCULAR NO. 165/2024-GST

Dated Dispur the 8th July, 2024.

Subject: Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors-reg.

No. CT/GST-15/2017/1037.— Representations have been received seeking clarification on the Place of Supply in cases of Custodial Services provided by Banks to Foreign Portfolio Investors (hereinafter referred to as “FPIs”), as a view is being taken by some field formations that the Place of Supply in case of ‘custodial service’ would be determined as per Section 13(8)(a) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”), i.e. the location of the service provider (banks or financial institutions).

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner, in exercise of its powers conferred by section 168 of the Assam Goods and Services Tax Act, 2017 (hereinafter referred to as “Assam GST Act”), hereby clarifies the issue as under:

Issue	Clarification
<p>Whether the activity of providing Custodial Services by banks or financial institutions to FPIs will be treated as services provided to 'account holder' under Section 13(8)(a) of the IGST Act, 2017?</p> <p>Further, how the place of supply of the said services shall be determined?</p>	<p>According to the Securities and Exchange Board of India (Custodian of Securities) Regulations 1996, ‘Custodial Services’ in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes-</p> <ul style="list-style-type: none"> • maintaining accounts of securities of a client; • collecting the benefits or rights accruing to the client in respect of securities; • keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and • maintaining and reconciling records of the services referred above. <p>As per Regulation 20(1) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, an FPI is allowed to invest only in the following securities, namely-</p> <p>(a) shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India;</p>

- (b) units of schemes launched by mutual funds under Chapter V, VI-A and VI-B of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996;
- (c) units of schemes floated by a Collective Investment Scheme in accordance with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999;
- (d) derivatives traded on a recognized stock exchange;
- (e) units of real estate investment trusts, infrastructure investment trusts and units of Category III Alternative Investment Funds registered with the Board;
- (f) Indian Depository Receipts;
- (g) any debt securities or other instruments as permitted by the Reserve Bank of India for foreign portfolio investors to invest in from time to time; and
- (h) such other instruments as specified by the Board from time to time.

Various banks enter into custodial agreements with the Foreign Portfolio Investors (FPIs) for the provision of such custodial services. The main activity carried out by banks as a custodian in relation to custodial services is maintaining account of the securities held by the FPIs.

As per clause (a) of sub-section (8) of section 13 of IGST Act, Place of Supply of services supplied by banking company or a financial institution or a non-banking company to account holders shall be the location of the supplier of services.

As per Explanation (a) of Section 13(8) of IGST Act, *'account' means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account.*

It is mentioned that the provisions similar to above provisions under IGST Act existed during the Service Tax regime. The place of provision of service under Service Tax was governed by the Service Tax Place of Provision of Supply Rules, 2012. Provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012 were identical to that of section 13(8)(a) of the IGST Act. The Education Guide under the Service Tax Law clarified the scope of the term "account holder" and the services provided by banks to account holders as well as the services which are not provided to account holders, as below:

"Question: 5.9.2 What is the meaning of "account holder"?"

Which accounts are not covered by this rule?

Answer: "Account" has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule.

Question: 5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?

Answer: Following are examples of services that are provided by a banking company or financial institution to an "account holder", in the ordinary course of business :-

- i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;*
- ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.*

Question: 5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?

*Answer: **Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business:-***

- i) financial leasing services including equipment leasing and hire purchase;*
- ii) merchant banking services;*
- iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;*
- iv) asset management including portfolio management, all forms of fund management, pension fund management, **custodial, depository** and trust services*

In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable

	<p><i>in the ordinary course of business), and the location of the service provider otherwise.”</i></p> <p>Accordingly, as per clarification given in Education Guide under Service Tax Regime, the custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder.</p> <p>As the provisions of section 13(8)(a) of the IGST Act are similar to the provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012, the clarification given in the Education Guide under Service Tax Regime is equally applicable under GST Regime.</p> <p>Accordingly, it is clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and therefore, the said services are not covered under Section 13(8)(a) of the IGST Act. Therefore, the place of supply of such services is not to be determined under Section 13(8)(a) of the IGST Act but has to be determined under the default provision i.e., sub-section (2) of section 13 of the IGST Act.</p>
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3. The above may be brought to the notice of all concerned.
4. Difficulties, if any, in implementation of the above instructions may be brought to the notice of the Commissioner at an early date.

Sd/=

(Pallav Gopal Jha, IAS)

Principal Commissioner of State Tax, Assam,
Dispur, Guwahati

Memo No. CT/GST-15/2017/1037-A

Dated Dispur the 8th July, 2024

Copy to :

1. The Commissioner & Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information.
2. The Commissioner of Central GST, Guwahati / Dibrugarh for information.
3. The Special Commissioner of State Tax (All) / Additional Commissioner of State Tax (All)/ Joint Commissioner of State Tax (All) / Deputy Commissioner of State Tax (All) / Assistant Commissioner of State Tax (All) / Superintendent of State Tax (All) for information and necessary action.
4. The Information Technology Officer, Office of the Commissioner of State tax, Assam for uploading it on the website of the Commissionerate for information of all concerned.

Parangmo
8.7.24.

Principal Commissioner of State Tax, Assam,
Dispur, Guwahati